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TEXAS DEPARTMENT OF PUBLIC SAFETY



**Texas Commercial Driver License  
Third-party Skills Testing**

**Memorandum of Understanding**

# **Memorandum of Understanding**

## **Texas Commercial Driver License**

### **Third-party Skills Testing Authority**

#### **Section 1 – Purpose**

The purpose of this agreement is to explain the requirements for conducting Commercial Driver License skills tests as a Third Party Tester. Authority to administer skills tests is granted only to Third Party Testers who both utilize third party examiners certified by the Department and enter into a Skills Testing agreement with the Department. This document will be incorporated by reference into each agreement.

#### **Section 2 – Definitions**

1. Applicant – An individual who intends to apply for a Commercial Driver License (Class A, B, or C) and is required to pass the applicable CDL skills test.
2. BTW – Behind the Wheel
3. CDL – Commercial Driver's License
4. Commercial Motor Vehicle (CMV) – A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle – (a) Has a gross combination weight rating of 11,794 kilograms (26,001 lbs) or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or (b) Has a gross vehicle weight rating of 11,794 kilograms (26,001 lbs) or more; or (c) Is designed to transport 16 or more passengers, including the driver; or (d) Is of any size and is used in the transportation of hazardous materials required to be placarded.
5. Department – The Texas Department of Public Safety (TxDPS).
6. Designated Responsible Person – Person selected by a Third Party Skills Testing Provider to supervise examiners, to include responsibility of all records and submission of reports.
7. Domicile – The residence where a person has their permanent home or principal establishment and to where, whenever absent, they intend to return; every person is compelled to have only one domicile at a time.
8. DOT Physical – A physical that meets definition of 49 Code of Federal Regulations (CFR) Parts 391.41 and 391.43.

9. Examiner – An Employee of a Third Party Skills Testing Provider licensed by the Department, who has been certified to administer skills tests to drivers applying for a Class A, B or C CDL.
10. FMCSA – Federal Motor Carrier Safety Administration.
11. FMCSR – Federal Motor Carrier Safety Regulation.
12. Employee – A person hired by a Training Provider and whose employment has been verified by the Department with the Human Resources Officer of the Training Provider.
13. Gross Combination Vehicle Weight Rating (GCWR) – As defined by 49 Code of Federal Regulations Part 383.5
14. Gross Vehicle Weight Rating (GVWR) – As defined by 49 Code of Federal Regulations Part 383.5.
15. MVR – Official Motor Vehicle record obtained from the Department.
16. Instant Random Sampling - Where a select single or group of applicants:
  - a. Is/Are currently at the Third Party Skills Testing Provider location,
  - b. Has/Have completed a skills exam within the current business day,
  - c. Is/Are selected entirely by chance; and
  - d. Has/Have an equal opportunity of being selected for re-examination.
17. Out-of-State – A person or Third Party Skills Testing Provider whose domicile is not in the state of Texas.
18. Random Sampling – Where a select single or group of applicants:
  - a. Has/Have completed the skills exams,
  - b. Is/Are chosen entirely by chance; and
  - c. Has/Have an equal chance of being selected for re-examination.
19. Skills Testing Pad - A 35' x 240' concrete or reinforced asphalt pad located in a safe location, clearly painted or marked with safety cones, free of debris, other vehicles, and segregated from the general public or traffic when utilized for skills testing.
20. Skills Testing Provider – Any public or private corporation, partnership, joint venture or sole proprietorship, federal or state agency or department, or any political subdivision thereof, that trains individuals for a Commercial Driver's License (CDL) and is approved by the Texas Workforce Commission, Texas Higher Education Coordinating Board, Independent School Board, or any entity approved by the Department.
21. SPE – Skills Performance Evaluation.
22. State – The state of Texas.
23. Substandard Test – Any part or parts of the Commercial Driver License Test not administered in accordance with standards, guidelines and/or policies established by

the Federal Motor Carrier Safety Regulation, the Department, state law TRC 522.023 and 37 Texas Administrative Code §16.31.

24. Third Party Skills Testing Provider - An authorized organization licensed by the Department to administer CDL skills tests in accordance with 49 CFR §§383.75, 384.228, 384.229 and by the standards established in the CDL Examiner Manual.
25. Training – An examiner who is also an instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that examiner. In other words, an Examiner cannot administer a CDL skills test to any applicant if they spent time training them (hands-on) on vehicle pre-trip inspection, basic control skills, and/or BTW requirements.

## Section 3 – General Provisions

1. The Department reserves the right to: change or modify these regulations and policies or cancel this program in its entirety at any time without prior notice. Notification of changes will be sent to the Designated Responsible Person of the Third Party Skills Testing Provider.
2. Failure to adhere to applicable guidelines, rules and/or regulations established by the FMCSA and the Department specific to CDL requirements can result in the Third Party Skills Testing Provider: being removed from the Third Party Tester Program, suspension of CDL skills testing privileges, and/or require the retesting of any applicant administered a CDL skills test by the Third Party Skills Testing Provider.
3. Companies operating under this Memorandum of Understanding are prohibited from hiring any Department Driver License Division employees an agent, examiner, or employee for 365 days from the employee's date of separation from the Department, unless the employee has officially retired from state service, or the Department has granted a waiver.
4. Certification may not be assigned. No individual, partnership, association or corporation may sell, assign, barter or trade a Third Party Skills Testing Provider or examiner certification issued by the Department.

## **Section 4 – Qualifications and Requirements**

In order to receive and maintain a Third Party Tester Certification and become an authorized organization to administer CDL skills testing, an organization must meet the following conditions:

### **1. Third Party Skills Testing Provider Application**

1. Make application to, and if approved, enter into an agreement with the Department, as described in this document.
2. Maintain at least one permanent, regularly occupied structure in Texas with a permanent Texas street mailing address.
3. Own or lease, in the name of the driver training school or school owner, at least one Class A or B (Group) CMV which requires a CDL and is specific to the type of skills exam being administered. Regional Education Service Centers that do not own or lease at least one Class A or B (group) CMV and that is serving as a Skills Testing Provider for a School District must present to the Department an agreement between the Regional Education Service Center and the School District certifying that the School District owns or leases at least one Class A or B (Group) CMV and the Regional Education Service Center has authorization to utilize the vehicle for skills testing.
4. Vehicles utilized for skills testing must have a current registration and safety inspection.
5. An Independent School District (ISD) not certified to administer CDL skills testing is permitted to enter into an agreement with another ISD that has been authorized by the Department to administer CDL skills testing for the purposes of administering the CDL skills tests to employees of the non-certified school district.
6. Conduct at least twenty (20) CDL skills exams per calendar year, with the calendar year beginning every January 1st.
7. Skills Testing Provider must have been in continual operation for 365 days immediately preceding the date of application to become a third party tester.
8. An existing Skills Testing Provider business may be purchased for continued operation by a new organization; however the new owner or lessor is required to apply as an original Skills Testing Provider applicant, and any existing or previous violation(s) cited by the Department at the physical location will be transferred to the new owner or lessor.
9. Must apply for an examiner's certification on behalf of each person in their employ who will be conducting skills exams.
10. Employ at least one examiner who has been certified and meets the qualification requirements of the Department.

11. Conduct a state and federal nationwide criminal background checks at the Skills Testing Provider's cost for each of its examiners and require additional checks as needed for cause.
12. Conduct all portions of the CDL skills test in Texas.
13. Maintain a basic control skills course in Texas and road test route that meets the requirements outlined in the CDL Skills Testing Manual. Skills testing pads must be approved by the Department. A Third Party Skills Testing Provider can share another Third Party Skills Testing Provider's Skills testing pad as long as there is a formal written agreement between the two companies that can be provided to the Department at the time of the inspection. This formal written agreement shall clearly indicate a schedule of when the pad will be utilized by each provider.  
  
**Note:** Basic control skills course(s) and CDL road test route(s) must be approved by the Department before a CDL test can be administered. The Department must approve any changes, or modifications, before the next test is administered. Road test routes must be approved by the Department and a copy of the route(s) must be on file at each testing location.
14. Examiners and the Designated Responsible Person are required to attend periodic training sessions when notified by the Department.
15. The skills test being administered must be the same as that administered by the Department.
16. Maintain a valid and operational telephone number for contact by the Department as needed.
17. Maintain the hours of operation on file with the Department.
18. Maintain a surety bond in the amount of \$25,000 times the number of examiners they employ. (governmental entities are exempt)
19. Maintain general business liability insurance in the amount of at least \$1,000,000.00. (governmental entities are exempt)
20. If a vehicle is provided for testing, maintain bodily injury and property damage liability insurance coverage on the vehicles in the amount of at least \$1,000,000.00. (governmental entities are exempt)
21. Maintain insurance coverage which does not exclude from coverage any person while taking the skills tests administered by the Third Party Skills Testing Provider, any person suffering bodily injury sustaining property damage as a result of a skills test administered by the Third Party Skills Testing Provider, or any person employed by the Third Party Skills Testing Provider to administer skills tests.
22. As evidence of required insurance coverage, the Third Party Skills Testing Provider must file with the Department either a certificate of insurance issued by an insurance company or surety company authorized to do business in Texas.

23. No advertising shall indicate in any way that the Third Party Skills Testing Provider can issue or imply that the Third Party Skills Testing Provider can influence the Department in the issuance of a CDL or imply that preferential treatment from the Department can be obtained.
24. A Third Party Skills Testing Provider may not use any Department or state seal or insignia or an insignia or design that is deceptively similar to such a seal in any advertising or promotional materials.
25. A Third Party Skills Testing Provider that is certified by the Department may, in their advertising, state that they are “certified”, but shall not indicate that the tester is approved, sanctioned, or in any way endorsed by the Department and shall not use any other name besides the name on its application for certification, nor shall the tester use “state” in any part of its name.
26. Must agree to indemnify and hold harmless the state of Texas, the Department, and all of its officers, employees and agents, from any and all rights, causes of action, claims, demands, suits or liabilities, arising from, based upon, occasioned by or attributable to any act or omission of the Third Party Skills Testing Provider or the Third Party Skills Testing Provider’s agents, examiners or other employees in the performance of the agreement.

## **2. Denial of Application**

The Department shall deny an original application or an application for renewal:

1. Of any entity that submits a fraudulent application.
2. Of any entity that owes delinquent fees to the Texas Comptroller of Public Accounts.
3. Of any entity that does not include an application for a Designated Responsible Person at the time of original application.
4. When the Skills Testing Provider applicant’s physical location does not meet applicable Texas Accessibility Standards.
5. When the physical address is not recognized by the U.S. Postal Service.

## **3. Designated Responsible Person Requirements**

1. In order to be certified as a Third Party Skills Test Provider, the Skills Test Provider must employ a Designated Responsible Person who will comply with the requirements listed in this Section.
2. The Skills Test Provider must provide evidence, satisfactory to the Department, that the Designated Responsible Person selected by the Skills Test Provider meets the requirements in Section 4.4. (Skills Testing Examiner).



3. May or may not be an examiner.
4. Ensure Third Party Skills Testing Provider agreements, examiner documentation, and Third Party Skills Testing Provider updates are sent to the Department, as required. The Department will place all companies on a two (2) year renewal cycle for these requirements.
5. A Monthly CDL Test Activity Report must be made available to the Department by no later than the 10<sup>th</sup> day of each month. For example, report for January 2016 is due to the Department no later than February 10, 2016. Negative reports are required even if no tests were administered.
6. Accountable for the maintenance and security of all driver files.
7. Notify the Department in writing within 24 hours of the Third Party Skills Testing Provider identifying or being made aware that an examiner has been arrested, charged, or convicted of a crime or has any cancellation, suspension, or revocation of their driving privilege.
8. Ensure only examiners certified by the Department are permitted to administer CDL skills tests, and those tests are administered in accordance with FMCSA and Department guidelines.
9. Inform examiners of any changes regarding CDL test administration and/or paperwork requirements as directed by the Department.
10. Notify the Department in writing (within 10 business days) of any changes in status of an Examiner, Designated Responsible Person, or Third Party Skills Testing Provider status, including any:
  - a. Terminations
  - b. Withdrawals from the program
  - c. Email address changes
  - d. Relocations
  - e. Mailing address changes
11. Required reports, score sheets and examiner cards can be obtained from the Department.
12. Must attend all advance training courses, workshops, seminars, and other instructional meetings, as required by the Department.

#### **4. Skills Testing Examiner Requirements**

1. Only a Department approved Third Party Skills Testing Provider may submit an application for a Skills Testing Examiner.

2. The Third Party Skills Test Provider must provide evidence, satisfactory to the Department, that the Examiner applicant, selected by the Third Party Skills Test Provider, meets the requirements in Section 4.4. (Skills Testing Examiner).
3. Must be domiciled in Texas. Exceptions are permitted for current and active duty military personnel and their spouses or dependents seeking CDL Examiner status, provided they can prove their required permanent change of station documents. These applicants will have out-of-state driver licenses and must provide DMV with a certified driver record from their "state of record". The Department reserves the right to require additional record checks should the Department determine it has probable cause or deems it necessary during their participation in the program.
4. Examiners must be fingerprinted and a nationwide criminal background check must be performed as required in FMCSR 49 CFR 384.228(g) paid for by the Third Party Skills Testing Provider. Criteria for not passing the criminal background check includes, but is not limited to the following:
  - a. Any felony conviction within the last 10 years
  - b. Any conviction involving fraudulent activities
  - c. An entering of an order of deferred adjudication for a felony, until five years after court supervision ceased and the case was dismissed
  - d. A conviction of an offense for driving while intoxicated, or for refusing or failing a blood/breath test during the five year period immediately prior to the date of application
  - e. Any driver license cancellation, suspension, or revocation of driving privileges connected to a moving violation for three years prior to applying to become an examiner and must not have any thereafter.
5. When an applicant's record shows any of the following, additional information will be secured from the applicant or other sources and an individual evaluation will be made of the applicant's suitability:
  - a. An arrest and/or indictment without conviction for a felony offense. If recent, the applicant will generally be disqualified unless there are strong extenuating circumstances such as a mistake having been made, withdrawal of charges by arresting agency, etc.
  - b. An arrest without conviction for driving while intoxicated. If recent, the applicant will generally be disqualified unless there are strong extenuating circumstances similar to a.) above.
  - c. A pattern of a high number of entries of crashes and moving violation convictions, at least two per year, in the applicant's traffic record over any three-year period and extending up into the past two years, but who was not suspended during the three-year period.

- i. Consider recency of last accident as well as total number
    - ii. Consider cases in which applicant was charged or in which other driver was not charged
    - iii. Consider conditions and circumstances including occupation – amount of exposure to crashes and moving violation convictions.
  - d. An arrest or conviction for a Class A or B misdemeanor.
    - i. Consider recency
    - ii. Consider nature of offense
    - iii. Consider conditions
- 6. The Third Party Skills Testing Provider must submit a completed examiner application to the Department for review and approval. A completed renewal application is required every two years thereafter.
- 7. Be certified and licensed by the Department within 90 days after completing the Department's examiner certification to administer skills test for the issuance of a Texas CDL.
- 8. An examiner may only be employed by one Third Party Skills Testing Provider at a time
- 9. Must attend and successfully complete any Skills Performance Evaluations (SPE), advance training courses, workshops, seminars, and other instructional meetings, as required by the Department.
- 10. Maintain a copy of their valid DOT Physical (if applicable) and CDL in the third party files.
- 11. Upon implementation of the Driver Record Monitoring Program by the Department, companies must enroll each examiner who administers CDL skills tests, into the program for the monitoring of any adverse activity on the examiner's driver record.
- 12. Must be at least twenty-one (21) years of age and hold a valid Texas CDL with the classification and endorsements required for operation of the CMV used in the skills tests conducted by the examiner.

## **Section 5 – Department Requirements**

### **1. Skills Testing Provider Certification**

1. An application for Skills Testing Provider certification shall be filed with the Department on a form prescribed by the Department.
2. The Department will evaluate the written application submitted by the Skills Testing Provider applicant, and if satisfactory, schedule an on-site inspection of the Skills Testing Provider applicant's physical location.
3. The Skills Testing Provider applicant shall permit the Department and/or FMCSA to inspect and audit its operations, facilities, and records as they related to its third party testing program, for the purpose of determining whether the applicant is qualified to be certified to administer CDL skills tests.
4. A Certification will be issued to Skills Testing Provider applicants who meet all the requirements in this Memorandum of Understanding and enters into an agreement with the Department to operate an approved testing program to administer skills tests to CDL applicants.
5. The certificate issued by the Department allowing a Skills Testing Provider to operate under the Third Party CDL Skills Testing Program must remain on file at the physical location of the Skills Testing Provider.
6. Agreements to administer third party testing programs including third party tester certificates are non-assignable.
7. Each agreement and certificate shall become effective on the date of issuance and shall expire two (2) years from the effective date, unless otherwise cancelled or revoked.
8. All renewal application forms must be filed with the Department not less than thirty (30) days prior to the time the certificate or agreement expires. The Department is not responsible for the timely issuance of any renewal certificate when the application is not received within the necessary timeframe.
9. Any Skills Testing Provider may relinquish its certificate and agreement upon thirty (30) days' notice to the Department.

### **2. Examiner Certification**

1. An examiner certification will be provided to the Third Party Skills Testing Provider on behalf of the examiner applicant of the Third Party Skills Testing Provider who has made application, and demonstrated that the examiner applicant has completed all necessary training as determined by the Department.

2. The certificate issued by the Department allowing an Examiner to operate under the Third Party CDL Skills Testing must remain on file at the physical location of the Skills Testing Provider.
3. The examiner's certificate must be surrendered to the Department when he or she leaves the employ of the Skills Testing Provider, when the examiner is no longer assigned third party examiner duties by the Skills Testing Provider, or when the certification has been cancelled.
4. Examiner certificates are non-assignable.
5. Each agreement and certificate shall become effective on the date of issuance and shall expire two (2) years from the effective date, unless otherwise cancelled or revoked.
6. All renewal application forms must be filed with the Department not less than thirty (30) days prior to the time the certificate or agreement expires. The Department is not responsible for the timely issuance of any renewal certificate when the application is not received within the necessary timeframe.
7. The third party tester must apply for examiner certification on behalf of persons in their employ or to be employed on a form prescribed by the Department.
8. The Department will evaluate the written application and background check, submitted on behalf of the examiner, including the individual's driver record. If satisfactory, the examiner will be permitted to complete the examiner training. Training may be waived if the examiner is seeking another certificate only because he or she has changed Skills Testing Providers.
9. Upon successful application, training, and evaluation, an examiner certificate will be issued evidencing a third party examiner's authority to conduct CDL skills tests for the classes and types of vehicles listed.
10. Evaluation will consist of successful completion of the 40 hour Certified Commercial Examiner training, five (5) CDL skills testing observations and five (5) CDL skills testing check-rides. Co-scoring must be within five (5) points of each other.
11. Successfully complete the Department's refresher course and examiner recertification every two (2) years to maintain their CDL examiner certification.
12. Failure to maintain uninterrupted employment with the Skills Testing Provider may result in the suspension of testing privileges and may result in the re-examination of any applicant skills tested by the employee.

### **3. Third Party Testing Oversight**

1. Inspections and audits will include, at a minimum, an examination of:
  - a. Records relating to the third party testing program,

- b. Evidence of compliance with Federal Motor Carrier Safety Regulations,
  - c. Skills testing procedures, practices and operations,
  - d. Vehicles used for testing,
  - e. Qualifications of third party examiners, and
  - f. A testing program by either testing a sample of drivers.
- 2. Allow representatives from the FMCSA or the Department to conduct both announced and unannounced audits without prior notice, including co-scoring along with the examiner during skills testing to compare pass/fail results.
- 3. Upon request by the Department, provide copies of any applicable records required to be maintained. All records, documents, reports and files required under this program must be kept in the state of Texas at a designated location identified in the Skills Testing Provider's third party application and available during normal working hours.
- 4. Upon request provide representatives of the FMCSA or Department with copies of all records required to be maintained in reference to this program.
- 5. These records must be maintained for a period of four years at the licensed location where the testing took place, and must include:
  - a. The name and address of each employee certified by the Department or Skills Testing Provider.
  - b. The name and address of each employee or student that was administered a CDL skills test.
- 6. Allow representatives from the FMCSA or Department to conduct instant random sampling, random sampling, or retest any applicant administered a CDL skills test by its examiners.
- 7. Allow representatives from the FMCSA or the Department to observe any or all portions of an applicant's CDL skills test (including those portions occurring inside vehicles) being administered by its examiners.

## **Section 6 – Skills Testing Applicants**

### **1. Eligibility Requirements**

1. Meet all applicable FMCSA and Department requirements.
2. Qualify under the provisions of FMCSR 383 and 391 to operate a CMV.
3. Be 18 years of age or older to move (intrastate) cargo originating and delivered within the boundaries of Texas or 21 years of age or older to move (interstate) cargo over state lines governed by Texas regulations.
4. Have good vision as determined by visual screening 49 CFR part 391.41(b)(10).
5. Successfully pass applicable knowledge test.
6. Possess a valid driver's license.
7. Possess a valid commercial learner's permit (issued 15 or more days old on the day test is administered).

### **2. Supporting Documentation**

Skills Test Providers must maintain a separate driver file for each individual administered a CDL test. Driver files will be kept for three years from the date the test was administered; three years after the driver leaves employment; or three years after the Skills Testing Provider is withdrawn from the Third Party Tester Program – whichever is greater. At a minimum driver files will include the following documents for each applicant (copies must be legible and may be stored electronically):

1. Copy of Driver's License reflecting the applicant's current address.
2. Copy of Commercial Learner's Permit (CLP).
3. 3-year driver record (cannot be more than 30 days old on the day skills test is administered).
4. All original CDL-41 CDL Score Sheet(s) if an applicant did not pass their skills test or failed to return.
5. Original CDL-41 CDL Score Sheet(s) if an applicant passed their skills test.
6. Copy of the road test waiver (examiner Card) completed and signed by the examiner who administered the test, after applicant passes the skills test.
7. Copy of the Certification of Conditions. (test results/pass fail given to customer)

## Section 7 – CDL Skills Test Administration

1. An examiner may not administer a CDL skills test until trained in accordance to 49 CFR 383.75 and certified by the Department.
2. An examiner may not charge or receive any compensation (other than normal salary or overtime pay) from Skills Testing Provider or applicant for the administration of a skills test. Example: money, gifts, lunches, favors, goods or services, trades, etc.
3. An examiner may not administer CDL skills tests for family members or relatives. Examiners must never perform transactions for themselves or for their families. Additionally an examiner must never perform a transaction for someone who resides in his/her home. Upon request, the Department will determine whether testing a specific applicant violates this requirement.
4. An examiner may not assist an applicant in a manner that provides an unfair advantage in passing the skills tests. i.e.; giving hints or excessive probing during the vehicle pre-trip inspection, stopping the vehicle before it hits a boundary during the basic control skills, or training on the approved road test route, etc.
5. An examiner must administer the same CDL skills test that the State Examiners administer in accordance with provisions of law and guidelines established by FMCSA, the Department, and the CDL Examiner Manual.
6. An examiner must hold the appropriate Class CDL with applicable endorsements and can only administer skills test for a Class of license that is equal to or below what was certified for by the Department.
7. An examiner must conduct the CDL skills tests in the appropriate group/class or “representative vehicle” the driver is currently permitted for and intends to operate.
8. Prior to testing, an examiner shall inspect the vehicle to verify it meets all motor carrier safety regulations and is otherwise safe to operate.
9. The examiner must not permit the vehicle to contain explosives or other hazardous material during testing.
10. During the skills test, there cannot be anyone else in or around the vehicle other than one (test) applicant, the examiner, Federal and/or Department auditors or employees. A designated responsible person can observe the skills test for compliance/quality control purposes; however this person may not interact with the applicant or examiner during the testing process.
11. An examiner who is also an instructor, either as a part of a school, training program, or otherwise, is prohibited from administering a skills test to an applicant who received skills training by that examiner. In other words, an examiner cannot administer a CDL skills test to any applicant if they spent any time training the student or employee(hands-on) vehicle pre-trip inspection, basic control skills, and/or BTW requirements. Classroom training is excluded from this requirement.



12. An examiner must examine each applicant's MVR and refuse to test any driver whose license is currently or subject to being suspended, revoked or cancelled. MVR cannot be more than 30 days old on the day skills test is administered.

**Note:** An official MVR may be obtained at the following website: [www.txdps.state.tx.us](http://www.txdps.state.tx.us).

13. An applicant's initial commercial learner permit (CLP), for that class of license, must have been issued 15 days or more old before they can be administered a CDL skills test.
14. Explain and ensure applicants sign a completed Certification of Conditions form before administering a skills test.
15. No translator or other intermediary will be permitted to interpret portions of the test that are scored on the basis of an applicant's verbal or written response. Nothing prohibits the use of a translator during training to present questions or receive answers from an applicant in any language on matters that do not require a scored response.
16. The examiner may only conduct the CDL skills test in English.
17. CDL testing must start on time, except in extenuating circumstances, in accordance to the schedule provided to the Department. The Department must be notified immediately through the Commercial Skills Testing Information Management System (CSTIMS) if a test is cancelled or rescheduled.
18. Complete the entire skills test without interruption. A brief (10-15 minute) break is permitted after the vehicle pre-trip inspection. Delaying the test to take care of personal matters, business, breakfast, lunch, etc. is prohibited.
19. Examiners are permitted to carry-over or bank scores for applicants who successfully complete the vehicle pre-trip inspection and/or basic control skills portion of the CDL skills test if the following conditions are met:
  - a. Examiners must complete the Worksheet for Banking Scores before administering any portion of a skills test.
  - b. Maintain on file a copy (or original) of all scoresheets AND Worksheet for Banking Scores from previous tests administered during the current 180-day learner permit period.
  - c. All portions of the CDL test must be administered if the Examiner is not in possession of the driver's file to verify previous test scores or if a different type of vehicle was used.
  - d. Previous test scores from CDL skills tests administered by the Department or a different Third Party Skills Testing Provider are not transferrable. For example, an applicant is not permitted to carry-over or bank any previous scores if they go from the Department to a Third Party Skills Testing Provider or vice-versa.

- e. Utilizing a different vehicle is permitted if the examiner compares and verifies that the new vehicle is representative of the previous vehicle. The vehicles must match when it comes to these items.
    - i. Class
    - ii. Air Brakes
    - iii. Auto or Manual Transmission
    - iv. Same articulation for combination vehicles. 5<sup>th</sup> wheel, pintle hook, etc.
    - v. Bus/Truck/Tractor
  - f. Examiners are required to administer all portions of the skills test failed.
    - i. A driver who fails the pre-trip inspection due to low score or does not perform the air brake check correctly is required to start over from the beginning during their next test, no scores or items inspected are carried over.
    - ii. A driver who fails the parallel parking maneuver is required to retake and successfully pass all the basic control maneuvers (straight line backing, off-set backing to the left or right, and parallel parking conventional or sight side) before going on the road test.
    - iii. A driver who fails the road test is required to retake the entire road test.
  - g. Once a driver obtains their initial CLP they have 180 days, or until their CLP expires or is renewed to pass the skills test. Afterwards, previous scores will be voided and the entire CDL skills test will have to be retaken (pre-trip inspection, basic control skills, and road test).
20. Skills test must be administered at an approved site in Texas and passed in sequence 1.) Pre-trip inspection, 2.) Basic control skills, and 3) road test. An applicant cannot advance to the next sequence if the applicant fails the current sequence being administered. After failing any sequence, in any combination three times, a new skills test must be administered from the beginning.
21. Skills Testing Providers must only administer skills testing to their own students or employees. It is permissible for these students or employees to be domiciled out-of-state.
22. After being authorized to conduct CDL skills testing by the Department, the Third Party Skills Testing Provider will be issued a series of controlled forms that must be completed in black ink and utilized in numerical order.
- a. Complete all applicable areas of form CDL-41, regardless if a test was passed or failed.
  - b. Upon passing or failing a CDL test all information must be entered into CSTIMS within 24 hours of the test.
23. Any applicant (regardless of driving experience) must wait 1 business day if they fail on any attempt at the skills test before being retested.
24. Examiners are permitted to have their CDL test administered by a State Examiner or another examiner within the same Skills Testing Provider.

25. An examiner who leaves the employment of a licensed Third Party Tester Skills Testing Provider and wishes to transfer to another licensed Third Party Tester Skills Testing Provider must:
- a. Have the new Skills Testing Provider submit a new examiner application and complete all department requirements as a new applicant.
  - b. Successfully complete a Skills Performance Evaluation.
26. CDL tests that are postponed due to severe weather or emergencies must be noted on the CDL-41, in CSTIMS and reported to the CDL Compliance Office within one (1) business day.

## **Section 8 – Penalties and Appeals**

### **1. Administrative and Testing Violations**

1. The Department reserves the right to take prompt and appropriate remedial action against a Third Party Skills Testing Provider if the Third Party Skills Testing Provider or Examiner of the Third Party Skills Testing Provider fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract. This includes any serious violation which demonstrates an examiner or Third Party Skills Testing Provider is a risk to the public, Department personnel, or the driver, including failing to maintain a professional relationship with students at all times.
2. The falsification of any required records, applications, or forms by a Third Party Skills Testing Provider, Designated Responsible Person, or examiner can result in the suspension, or revocation, of their Third Party Testing certification. Depending upon the egregiousness and/or severity of the violation, it can result in the Skills Testing Provider's expulsion from the program. Such falsification may also result in criminal prosecution pursuant to Texas Penal Code §37.10.
3. Failure to comply with all Third Party Tester Program requirements can result in the suspension or revocation of the Skills Testing Provider, Designated Responsible Person and/or examiners certification.

### **2. Operational Violations**

1. Within 10 calendar days of occurrence, the Third Party Skills Test Provider must notify the Department of any of the following operational violations.
  - a. The provider employs individuals currently employed by the Department's Driver License Division.
  - b. With the exception of a retired employee, the provider employs an individual who has not been separated from employment of the Driver License Division for at least 365 calendar days.
  - c. The provider owes delinquent fees to the Texas Comptroller of Public Accounts.
  - d. The provider lacks a Designated Responsible Person.
  - e. The provider's location fails to meet Texas Accessibility Standards.
  - f. The provider fails to have a telephone that registers to the name listed on the Skills Testing Provider's certification.
  - g. The provider, if rated by the FMCSA, currently has an unsatisfactory rating from FMCSA.
  - h. The provider fails to maintain a continuous surety bond.

- i. The bond amount is no longer sufficient to cover the amount of examiners conducting skills testing.
  - j. An examiner does not maintain a valid CDL in the same class he/she is authorized to certify other drivers.
  - k. The number of vehicles owned or leased fall below the minimum requirements.
  - l. The Skills Testing Provider changes address or the basic control skills testing location without prior notification and authorization by the department.
  - m. The Skills Testing Provider fails to maintain an approved basic control skills testing location.
  - n. Violates any requirement of this MOU.
2. If the Third Party Skills Testing Provider fails to correct any outstanding violations within 5 business days, the Department has the authority to suspend for up to one year, a Third Party Skills Testing Provider's certification to conduct CDL skills testing.

### **3. Examiner Violations**

#### **1. Suspensions**

1. The Third Party Skills Testing Provider penalties for non-compliance violations committed by an examiner with this program are defined and applied as follows:

Administrative Non-Compliance: Failure to meet requirements for reporting, notifications, record keeping, or similar acts that do not compromise test integrity or public safety.

First Occurrence	Warning Letter
Second Occurrence (within one year of first offense)	Warning Letter
Third Occurrence (within one year of prior offenses)	30 day suspension
Fourth Occurrence (within one year of prior offenses)	1 year

#### **2. Revocations**

1. Discrepancy in Test Procedure: A Third Party Skills Testing Provider who knowingly allows an examiner to fail to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver. Or failure to include all required parts of a test procedure, such as omission of the pre-trip inspection, failure to use an approved test route, use of an unsafe vehicle, erroneously scoring the applicant to guarantee passing, or other action determined to significantly compromise the integrity of the test process or public safety.

First Occurrence	Termination of testing certification
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2. **Fraud:** A Third Party Skills Testing Provider who knowingly allows an examiner to abuse the testing authority granted to them through the certification process to gain profit through issuance of a license to an applicant that has not passed a complete skills test, falsification of records or information, refusal to allow access to all documents, papers, letters and material subject to the provisions of the Third Party Tester Program or commits an act that, in the opinion of the Department, compromises the integrity of the Program.

First Occurrence

Termination of testing certification

Note: The Department will have sole discretion to determine the level of noncompliance and substandard testing is a permanent removal from the program.

## 4. Skills Testing Provider Violations

### 1. Suspensions

1. For operational violations listed in Section 8.2, the Department shall take into account the seriousness of the violation, the repetitiveness, whether the violation has been corrected, and how long the violation was unremediated in determining if any penalty should be decided against the Skills Testing Provider.

First Occurrence

Warning Letter

Second Occurrence (within one year of first offense)

Warning Letter

Third Occurrence (within one year of prior offenses)

30 day suspension

Fourth Occurrence (within one year of prior offenses)

1 year

### 2. Revocations

1. **Discrepancy in Test Procedure:** If the Department determines the Skills Test Provider knowingly or intentionally permitted an examiner to fail to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver. Or failure to include all required parts of a test procedure, such as omission of the pre-trip inspection, failure to use an approved test route, use of an unsafe vehicle, erroneously scoring the applicant to guarantee passing, or other action determined to significantly compromise the integrity of the test process or public safety.

First Occurrence

Termination of testing certification

2. **Fraud:** If the Department determines that the Skills Test Provider knowingly or intentionally abuses the authority granted to gain profit through issuance of a license to an applicant that has not passed a complete skills test, falsification of records or information, refusal to allow access to all documents, papers, letters and material subject to the provisions of the Third Party Tester Program or commits an act that, in the opinion of the Department, compromises the integrity of the Program.

First Occurrence

Termination of testing authority

Note: The Department will have sole discretion to determine the level of noncompliance and substandard testing is a permanent removal from the program.

## **5. DENIAL, SUSPENSION, CANCELLATION, OR REVOCATION**

1. DENIAL, SUSPENSION, CANCELLATION, OR REVOCATION OF APPROVAL. The Department may deny, suspend, cancel, or revoke any approval or authorization provided under this agreement if the Department finds that the action is necessary to maintain the integrity, security, honesty, or fairness of the operation or administration of skills testing if the authorized organization or examiner:
  - (a) Does not satisfy the requirements established under this agreement to receive or retain approval;
  - (b) Permits fraud or engages in a fraudulent practice with reference to an application to the agency;
  - (c) Permits fraud or engages in a fraudulent practice in an action between the examiner and student or employee; or
  - (d) Fails to comply with the rules of the Department.
2. This agreement is not subject to review or appeal under Government Code Chapter 2260.

## **Section 9 – Termination**

This agreement automatically terminates two years after the date it signed and approved by the Department unless timely renewed. In order to timely renew, a new application must be submitted at least 30 days prior to the date of expiration.

## **Section 10 – FMCSA Regulations**

### **§383.75 Third party testing.**

Third party tests. A State may authorize a third party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

- (1) The skills tests given by the third party are the same as those that would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;
- (2) The State must conduct an on-site inspection of each third party tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates;

(3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.

(4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed in §384.228.

(5) The State must, at least once every 2 years, do one of the following for each third party examiner:

(i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;

(6) The State must take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;

(7) A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and

(8) The State has an agreement with the third party containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third party skills test examiners meet the qualification and training standards of §384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third party;

(1.) Reserve unto the State the right to take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;



(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.

(vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third party tester to use designated road test routes that have been approved by the State;

(viii) Require the third party tester to submit a schedule of CDL skills testing appointments to the State no later than two business days prior to each test; and

(ix) Require the third party tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third party agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(E) A copy of the third party tester's State-approved road test route(s); and

(F) A copy of each third party examiner's training record.

(b) Proof of testing by a third party. The third party tester must notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.

(c) Minimum number of tests conducted.

The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. Exception: Examiners who do not meet the 10-test minimum must either take the refresher training specified in §384.228 of this chapter or have a State examiner ride along to observe the third party examiner successfully administer at least one skills test.

### **§384.228 Examiner training and record checks.**

For all State and third party CDL test examiners, the State must meet the following 10 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests.

(c) The training course for CDL knowledge test examiners must cover at least the following three units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

(ii) Drivers covered by CDL program.

(iii) CDL vehicle classification.

(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

(i) CDL test, classifications, and endorsements.

(ii) Different examinations.

(iii) Representative vehicles.

(iv) Validity and reliability.

(v) Test maintenance.

(3) Knowledge tests:

(i) General knowledge tests.

(ii) Specialized knowledge tests.

(iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.

(d) The training course for CDL skills test examiners must cover at least the following five units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

- (ii) Drivers covered by CDL program.
- (iii) CDL vehicle classification.
- (iv) CDL endorsements and restrictions.
- (2) Overview of the CDL tests:
  - (i) CDL test, classifications, and endorsements.
  - (ii) Different examinations.
  - (iii) Representative vehicles.
  - (iv) Validity and reliability.
  - (v) Test maintenance.
- (3) Vehicle inspection test:
  - (i) Test overview.
  - (ii) Description of safety rules.
  - (iii) Test scoring procedures.
  - (iv) Scoring standards.
  - (v) Calculating final score.
- (4) Basic control skills testing:
  - (i) Setting up the basic control skills course.
  - (ii) Description of safety rules.
  - (iii) General scoring procedures.
  - (iv) Administering the test.
  - (v) Calculating the score.
- (5) Road test:
  - (i) Setting up the road test.
  - (ii) Required maneuvers.
  - (iii) Administering the road test.

(iv) Calculating the score.

(e) Require all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the five units of instruction in paragraph (d) of this section.

(f) Require State and third party CDL test examiners to successfully complete a refresher training course and examination every four years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

(1) For CDL knowledge test examiners, the three units of training described in paragraph (c) of this section.

(2) For CDL skills test examiners, the five units of training described in paragraph (d) of this section.

(3) Any State specific material and information related to administering CDL knowledge and skills tests.

(4) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.

(g) Complete nationwide criminal background check of all skills test examiners prior to certifying them to administer CDL skills tests.

(h)(1) Complete nationwide criminal background check of all State and third party test examiners at the time of hiring.

(2) Complete nationwide criminal background check of any State and third party current test examiner who has not had a nationwide criminal background check.

(3) Criteria for not passing the criminal background check must include at least the following:

(i) Any felony conviction within the last 10 years; or

(ii) Any conviction involving fraudulent activities.

(i) Maintain a record of the results of the criminal background check and CDL examiner test training and certification of all CDL test examiners.

(j) Rescind the certification to administer CDL tests of all test examiners who do not successfully complete the required refresher training every 4 years.

(k) The eight units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

#### **§384.229 Skills test examiner auditing and monitoring.**

To ensure the integrity of the CDL skills testing program, the State must:

- (a) At least once every 2 years, conduct unannounced, on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files;
- (b) At least once every 2 years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners.
- (c) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;
- (d) Establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number of each third party CDL skills test examiner;
- (e) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and
- (f) Establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number.